Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-651

TEAMSTERS LOCAL UNION 657,
Petitioner,
vs.
JESSE RODRIGUEZ, SADRACH G. PEREZ and MODESTO HERRERA,
On Their Own Behalf and on Behalf of Those Similarly Situated,
Respondents,
and
TEAMSTERS LOCAL UNION 657,
Petitioner,
vs.
ERNEST HERRERA, TRINE URIBE and MARIO MELCHOR,
Respondents,
and
TEAMSTERS LOCAL UNION 657,
Petitioner,
vs.
PATRICK RESENDIS, TONY ESCOBEDO, WILBURN WHITE,
ARTURO RODRIGUEZ and ELIAS GONZALEZ,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

BRIEF FOR THE PETITIONER
Teamsters Local Union 657

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OPINIONS BELOW

The opinions of the Court of Appeals in the cases at bar are reported, as follows: *Rodriguez v. East Texas Motor Freight*, at 505 F 2d 40, *Herrera v. Yellow Freight System, Inc.*, at 505 F 2d 66, and *Resendis v. Lee Way Motor Freight, Inc.*, at 505 F 2d 69. The *Rodriguez* opinion is reproduced in the Appendix (App. 68-111).

The Trial Court's Findings of Fact and Conclusions of Law in *Rodriguez* are reproduced in the Appendix beginning at page 55.

JURISDICTION

The judgments of the Court of Appeals were entered, in all three cases, on November 25, 1974. A petition for rehearing was filed in each case and all three were denied by orders entered on August 18, 1975.

A single petition for a writ of certiorari to review the judgments in the three cases was filed by Teamsters Local Union 657 on November 1, 1975, and was granted May 24, 1976. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

Section 702, (a) through (j), 42 U.S.C. Section 2000e-2 (a) through (j) of the Civil Rights Act of 1964, as amended (App. 451-456).

42 U.S.C. Section 1981 (App. 451).

Sections 8(b)(3) and 9(a) of the National Labor Relations Act, as amended, 29 U.S.C. Sections 158(b)(3) and 159(a) (App. 450-451).

QUESTIONS PRESENTED

I

Whether the duty of a local labor union to represent employees under 42 U.S.C. Section 2000e-2 and 42 U.S.C. 1981, as imposed by the Court of Appeals in the cases at bar, conflicts with the restrictions placed upon a local union by 29 U.S.C. Sections 158(b)(3) and 159(a), in its representation of employees.

II

Whether an integrated local labor union, the majority of whose members are Mexican-American and Black, which has followed the instructions of its membership in negotiations on collective bargaining agreements, is nevertheless responsible, under 42 U.S.C. Section 2000e-2 and 42 U.S.C. 1981, for any discriminatory "lock-in" effects flowing from the operation of hiring practices upon such contracts which have been negotiated and ratified on a National and Regional basis.

STATEMENT OF THE CASE

A

The Nature of the Cases and Parties Involved.

All three of these cases allege violations by the Petitioners of rights secured to Respondents by Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. 1981. The substance of the violations alleged are the same in each of the cases. They are, that Respondents were discriminatorily denied employment as road truck drivers by their respective employers, and that this discrimination was founded on their race and national origin (App. 7-19).

They also complain of "no-transfer" practices by their employers, which they say discriminatorily precluded their "transfer" from their jobs as incumbent city truck drivers to jobs as road truck drivers, at company terminals where such jobs existed (App. 10-11).

As to the Union Petitioners, Respondents main complaint is that the seniority systems in effect at their terminals of employment, pursuant to collective bargaining agreements between the various employers and the unions, had the effect of locking them in their jobs as city drivers. They contend that this so-called "lock-in" perpetuated the discriminatory hiring practices (App. 11-13).

The reply of Petitioner Local 657 is that it is not responsible for the hiring practices of the employers, and that in the applicable collective bargaining proceedings, it has followed the instructions of its affected membership relative to the negotiation of their contractual rights to seniority and transfer between jobs (App. 24-25).

This Petitioner also says that it cannot singularly make changes in National and Regional collective bargaining agreements that would affect other local unions and their members, because multi-employer, multi-union agreements, as regulated by the National Labor Relations Act, require the concurrence of the employer and other local unions involved (App. 23-24).

The separate job classifications involved in the cases at bar are those of "road" or "line driver" and "city, pickup and delivery driver." The former drive equipment between the various terminals of the defendant truck lines, while the latter deliver freight locally (App. 70).

The *Rodriguez* case was brought by three individuals working as city truck drivers for East Texas Motor Freight, Inc. (Petitioner ETMF) at its terminal in San Antonio, Texas. The named Plaintiffs sue on their own behalf and on behalf of all Mexican-American and black city drivers of ETMF in the State of Texas.[1] All three of the named Plaintiffs were members of Local Union 657, whose office is also located in San Antonio (App. 7-9, 15).

The *Herrera* and *Resendis* cases supra, were not brought as class actions, but only on behalf of the named Plaintiffs. In these two suits also, all of the Plaintiffs worked as city truck drivers in San Antonio, Texas, for their respective employers, Yellow Freight System, Inc. and Lee Way Motor Freight, Inc.

The three Defendant truck lines are interstate common motor carriers. Petitioner ETMF, for example, has 52 terminals in 19 states (App. 70). As is the practice in the trucking industry, these truck lines domicile road drivers at only some of their terminals (App. 70).

---

[1] We defer to the briefs of ETMF and Southern Conference of Teamsters for the presentation of the argument on the "class action" considerations.

The Defendants, Southern Conference of Teamsters (Petitioner Southern Conference) and Teamsters Local Union 657 (Petitioner Local 657) are labor organizations, affiliated with the International Brotherhood of Teamsters, which was named as a Defendant in only the *Herrera* and *Resendis* cases. Petitioner Local 657 was the collective bargaining representative for all of the named Plaintiffs in the three suits.

The cases were consolidated for oral argument on appeal to the Fifth Circuit Court of Appeals. Such Court has cited them as the "Rodriguez trilogy." *Sabala v. Western Gillette, Inc.*, 516 F2d 1251, 1253 (5th Cir. 1974). The central theme which runs throughout the cases is the nature of the complaint of the Respondents as above set forth.

B

The Trial Court Stipulation in Rodriguez.

At the time of trial, all parties in *Rodriguez* stipulated to certain facts (App. 417-419; R. 74, 5-8). The parts of this stipulation which are relevant to the complaint against Petitioner Local 657 are as follows:

> (a) That Plaintiffs were employed at the San Antonio terminal of ETMF without regard to their race, color or national origin.
>
> (b) The no-transfer rule of East Texas Motor Freight, that is no-transfer between classifications which would include no-transfer from the city to road or road to city has been uniformly applied without regard to race, color or national origin.
>
> (c) Except for one road driver acquired by merger with another company, ETMF has never had road drivers domiciled in San Antonio.

(d) That prior and subsequent to the effective date of the Civil Rights Act of 1964 to the date that a charge of discrimination was filed with the Equal Employment Opportunity Commission by Plaintiff Rodriguez, East Texas Motor Freight had never employed a Negro or Mexican-American as a line driver in the State of Texas.

(e) That the claims of discrimination by Plaintiffs "is solely based upon the fact that after their original employment they have been locked-in to the lower paying job of city driver" because of separate seniority rosters and because if they did transfer they would lose their accumulated city seniority.

As to the employer, Petitioner ETMF, it was stipulated that the only issue before the Court was whether the failure of ETMF to consider Plaintiffs' line driver applications was a violation of Title VII and 42 U.S.C. Section 1981 (App. 419; R. 74, 7-8).

C

Statistical Evidence, Applications, and Responsibility for Hiring.

Introduced into evidence are personnel rosters for the corporate headquarters and each terminal of ETMF in the State of Texas (App. 352-415; R. 74, 6). These give the name, employment date and job classification of each employee as of February 29, 1972.

Those employees of ETMF who held jobs as road drivers, as of November 14, 1972, are also shown on ETMF's road, or line driver, terminal seniority roster of November 14, 1972 (Pl. Ex. 26; R. 74, 6). This roster not only lists the names and seniority dates of the road drivers, but also the local teamster union which represents them as members and employees.

None of them are members of Petitioner Local 657. These personnel rosters form the basis of the above stipulation that ETMF has never employed a Mexican-American or Negro as a line driver in the State of Texas.

Since 1952, a majority of the employees working for ETMF within the jurisdiction and membership of Local 657 have been blacks and Mexican-Americans, as is noted by the Fifth Circuit in *Rodriguez* (App. 99 and 422; R. 74, 19-20).

In August, 1970, each of the named Plaintiffs made a written application to the terminal manager of ETMF at San Antonio, Texas for jobs as road drivers with the company (App. 324-26; R. 74, 6). The treatment of these applications by ETMF is the subject of the stipulation stated above relating to the issue between Plaintiffs and ETMF.

The hiring of employees by ETMF in the case at bar is exclusively a management function. The company has always exercised full responsibility for hiring and Local 657 has never exercised any (App. 99). We do not believe that there is any dispute about this point.

On several occasions, over a considerable period of time in 1969 and 1970, Petitioner Local 657, through its President, requested ETMF to give jobs as road drivers to the three named Plaintiffs in Rodriguez at locations where such jobs existed (App. 195-197, and 235-237). The ETMF official to whom these requests were made, did not reject them on the grounds of a company policy prohibiting "transfers" from city to road jobs, and did not recall having mentioned the company's "no-transfer" rule (App. 237).

Petitioner Local 657 had no voice in the institution and/or publication of ETMF's "no-transfer" rule (App. 310).

D

Jurisdiction and Membership of Local 657.

The Charter of Local Union 657, granted to it by the International Brotherhood of Teamsters, gives it a geographical jurisdiction that is limited to several counties in South Texas (App. 425; R. 74, 19-20). It is an integrated local labor union, and since 1965 the majority of its total membership has been Mexican-American and black (App. 421; R. 74, 19-20). Since 1970 the majority of the members of the seven man Executive Board of Petitioner Local 657 have been Mexican-American and Negroes (App. 193-194).

The employees and members of Local Union 657 who work for the various truck lines under the National Master Freight Agreement, and its Southern Conference Supplements, constitute a separate and distinct bargaining unit apart from its total membership, for purposes of collective bargaining with their truck line employers. During the period from January, 1965 to January 1972, Mexican-Americans and Negroes have been in the majority in this unit of the Local 657 membership (App. 420; R. 74, 19-20).

E

The Contracts in Issue and the Negotiation Thereof.

The initial organization and representation, by entities of the Teamster's Union, of employees of Respondent ETMF who work as line drivers in this area, took place in 1951. At that time, ETMF domiciled line drivers only at its terminals in Dallas, Texas and Texarkana, Texas. A separate collective bargaining agreement covering only line driver jobs was executed in 1951 by ETMF and the involved Teamster Union Affiliates (App. 308-309).

Petitioner Local 657 has never been a party to a contract with ETMF covering wages, hours and working conditions of road or line drivers (App.72, 193-194). All of its contracts with ETMF since 1950 have been agreements covering only employment conditions of city drivers (Local 657 Exhs. A,B,C, D,E,F. and G; R. 74; Plff's. Exhs. 13,14,15 and 16; R. 14). Since February, 1964 the National Master Freight Agreement, and its Supplements applicable to the Southern Conference area, have been in existence.

There does not seem to be any dispute as to the procedure that was followed in the negotiation and ratification of the National Master Freight Agreement and its Southern Conference Supplements. This procedure is fully described in *Brotherhood of Teamsters and Auto Drivers, Local No. 70, International Brotherhood of Teamsters and California Trucking Association, Inc.*, 194 NLRB 674 aff'd 470 F 2d 509 (9th Cir. 1972), cert. den. 411 U.S. 923.

The National Master Freight Agreement is negotiated on a nationwide basis by authorized representatives of the multi-employer unit of truck lines, and the multi-union unit of local labor unions. The Southern Conference Supplements are negotiated concurrently with the National Agreement, but by different negotiating groups. Like the national agreement, the regional supplements are also negotiated by representatives of participating truck lines and local labor unions. The tentative collective bargaining agreements arrived at by this process are submitted to a national and regional referendum of the affected employees for approval or rejection. *Brotherhood of Teamsters, Local 70, and California Trucking Assn.*, supra, 194 NLRB at 677.

Petitioner Local 657 is affiliated with the International Brotherhood of Teamsters and thereby obligated to abide by the terms of the International Constitution. This instrument

is in evidence as Southern Conference Ex. 1 (R. 74, 20), and Article XVI, Section 4(a) thereof reads, in part, as follows:

> "Area, Multi-Area or National Company-Wide or Industry-Wide Contracts
>
> Section 4(a). If a majority of the affiliated Local Unions vote for area, multi-area or national, company-wide or industry-wide negotiations for an area, national, company-wide or industry-wide contract, all involved affiliated Local Unions shall be bound by such vote, must participate in such area, multi-area or national, company-wide or industry-wide bargaining and shall be bound by the contract approved as provided below. Upon completion of negotiations by a Conference Trade Division, or by any Committee appointed by the General President, subject to the approval of the General Executive Board, to engage in negotiation of an industry, area, multi-area or national or company-wide contract, such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.
>
> If a majority of the votes cast by Local Union members voting approve such contract it shall become binding and effective upon all Local Unions involved and their members . . ."

From the above described negotiations came the separate contracts, and their seniority provisions, which are criticized by the Plaintiffs. Those covering the years 1967 to 1973 are in evidence in *Rodriguez* as Plaintiffs' Exhibits 13, 14, 15 and 16 (R. 14).

The seniority rules at issue, negotiated into contract supplements, provide for separate job bidding and lay-off seniority for city motor freight employees and road motor freight employees of the respective employers. There are no provisions

that prohibit city drivers from becoming road drivers. However, the agreements do provide for job bidding and lay-off seniority at the terminals of their employment, for all employees with the particular road or city bargaining units beginning with the date of entry of the particular employee into that bargaining unit.

Prior to the commencement of negotiations on these contracts, Petitioner Local 657 has called its affected membership into special meetings for the purpose of determining the changes or additions that such members wanted sent to the negotiating committees for submission to the employers for inclusion in subsequent contracts (App. 193-194).

The President of Local 657 testified in *Rodriguez* that at these special meetings none of the named Plaintiffs, or any other employee of ETMF, had (a) ever complained of discrimination by ETMF against Mexican-American and Negroes, (b) ever requested one contract for road and city drivers, or (c) ever requested the right to carry city seniority to road jobs (App. 193-194; R. 74, 332-333). The Plaintiff Rodriguez supported this by his statements that (a) he personally had never heard any other ETMF employee complain to Local 657 about discrimination, and (b) that he had never requested Local 657 to take action about loss of company seniority on transferring to a road job, and that he had never heard any other ETMF employee make such a request (App. 275-276).

After the trial of Rodriguez was completed, but before judgment was entered, Petitioner Local 657 held another of these special meetings of its members working under the National Master Freight Agreement, and Southern Conference Supplement, to obtain their demands for contract changes for the then upcoming contract negotiations. The matter of seniority "carry-over" came up at this meeting and those present voted to retain the existing contract seniority provisions. Even a proposal for

a one-time-only entry into the road driver unit, similar to that which was later suggested by the Fifth Circuit in this case, was rejected by the members present. The majority of those present and voting were Mexican-American and Negro city drivers (App. 46-48; R. 58).

F

Decisions of the Courts Below.

The Trial Court concluded that none of the Petitioners had violated Title 42 U.S.C. Section 2000e-5, or any section of Title 42 relating to race discrimination. It also refused to certify the case as a class action (App. 66-67).

The Court of Appeals for the Fifth Circuit reversed the Trial Court (App. 68-69). As to Petitioner Local 657, the ground for the reversal was Local 657's "role in establishing separate seniority rosters that failed to make allowance for minority city drivers who had been discriminatorily relegated to city driver jobs, . . ." (App. 101).

SUMMARY OF ARGUMENT

1. Petitioner Local 657 did not violate the Civil Rights Acts by reason of its failure to negotiate certain contract terms which its membership did not authorize it to submit to the multi-union committee to which Petitioner assigned its bargaining rights for negotiation of national and regional collective bargaining agreements. Under the National Labor Relations Act, Petitioner was legally obligated to sign, and comply with, the agreements negotiated and ratified by the multi-union bargaining unit. The employer, ETMF did not have road driver jobs within the representation jurisdiction of Petitioner's Local 657. Therefore, Petitioner's withdrawal from the multi-union bargaining unit would not have enabled it to make demands for contractual right to such jobs.

2. Petitioner Local 657 being an integrated local union, the majority of whose members are Mexican-American and Negroes, and whose actions relative to the negotiation and administration of collective bargaining agreements have been racially neutral, should not be held to have violated the Civil Rights Act of 1964, or 42 U.S.C. Section 1981, solely because of the hiring practices of an employer, outside the representation jurisdiction of Petitioner Local 657.

ARGUMENT

I

The National Labor Relations Act Bars Local 657 From Singularly Effecting Changes in National and Regional Collective Bargaining Agreements Approved by a Majority of the Multi-Union Bargaining Unit. Since Local 657 Has Not Committed Any Other Act of Commission or Omission in Violation of Law, It Should Not Be Held to Have Violated the Civil Rights Act of 1964 or 42 U.S.C. Section 1981 Solely Because It Did Not Effect Some Type of Seniority Carryover in the National and Regional Separate Contracts for City and Road Truck Drivers, So as to Eliminate Any Continuing Effects of Discriminatory Hiring Policies.

We respectfully submit that the Court of Appeals has imposed liability upon Petitioner Local 657 for failing to effect certain changes in its collective bargaining agreements, without taking into consideration the restrictions of the National Labor Relations Act upon it in the contract negotiations. Even the Respondents in *Rodriguez* state, in their Brief in Opposition to the Petition for Certiorari at page 23, that:

> "Petitioner Local 657 correctly argues that it could not, acting alone, have effected any relief for Plaintiffs' class."

They concede the legal limitations upon this Petitioner's ability to negotiate contractual seniority rights with the employer for road driver jobs.

The only complaint that Respondents make against Local 657 is that there are separate seniority rosters, and if they presently transfer to road jobs they lose their accumulated city seniority. This is their stipulation. The only reason that the Court of Appeals held Petitioner Local 657 liable is because it "established" separate rosters, or contracts, that did not contain some type of provision to eliminate the effects of discriminatory hiring practices. We submit that in arriving at this conclusion the Fifth Circuit has overlooked several material facts that are involved in this case.

The Respondents, as a remedy for their complaints, request the Court to merge the city driver and road driver seniority rosters of ETMF. The Fifth Circuit rejected this and stated an alternative method that a Court might order used. Petitioner Local 657 could not, and cannot, institute and make operative any method, without the consent and agreement of ETMF. A local labor union does not have any authority to impose wages, hours or working conditions upon an employer, except through the process of collective bargaining, as it is regulated by the *National Labor Relations Act*, as amended. 29 U.S.C. Section 159 (a) et seq.

In *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395 (1952), which involved a charge against the employer of refusing to bargain, this Court stated:

> "The National Labor Relations Act is designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. The Act does not compel any agreement whatsoever between employees, and employers. Nor does the Act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement."

Petitioner Local 657 did not violate the civil rights of Respondents by reason of its role in the negotiation of the National Master Freight Agreement and Southern Conference Supplement because Respondents, and their fellow members of Local 657, directed the organization's conduct relative to the contracts, and made no complaint that they were racially discriminatory. How-

ever, this part of Petitioner's argument is reserved for later discussion.

As stated above, the only way that Local 657 could have obtained the contractual rights Plaintiffs seek, was through the process of collective bargaining,[2] and the failure to obtain them is the basis for imposition of liability upon this Petitioner by the Court of Appeals.

Petitioner might have refused to assign its bargaining rights to the National and Regional negotiation committees, and negotiated directly with ETMF for a collective bargaining agreement covering only the ETMF employees within the representation jurisdiction of Local 657. In such event, it would immediately have been faced with the fact that there were no road driver jobs within its jurisdiction. Insistence upon rights to such jobs outside its jurisdiction would have constituted a refusal to bargain by Local 657. *National Labor Relations Board v. Worster Division of Borg-Warner*, 356 U.S. 342, 1958; *Doud's International Longshoremen's Assn.*, 241 F 2d 278 (2nd Cir. 1957). Such a position would have also brought Local 657 into a jurisdictional dispute with the local union representing such road drivers.

In *N.L.R.B. v. International Brotherhood of Electrical Workers*, 266 F 2d 349 (1959), the Fifth Circuit found a local labor union to be violating 29 U.S.C. Section 159(b)(3) by insisting, as a condition of any agreement, that the bargaining unit be enlarged to include certain operations of the employer being performed by members of another union.

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[2] Respondents do not contend that they ever requested Petitioner to institute legal proceedings, or charges with the National Labor Relations Board, to remedy discrimination against them by ETMF. Nor is there any evidence in the record that any employee of ETMF ever filed a grievance against ETMF under the contract grievance procedure, alleging discrimination. The President of Local 657 testified that none of the named Plaintiffs ever requested Local 657 to take any formal action against ETMF over its no-transfer policy (App. 193).

If the officers of Local 657 had failed to forward the proper bargaining authority to the negotiating committees, as mandated by the members, they would have violated the Landrum-Griffin amendments to the *National Labor Relations Act*, 29 U.S.C. 501(a) and (b), as well as the Union Constitution. Section 501 creates a fiduciary obligation in union officers to follow and execute the mandates of the union constitution, the by-laws and the resolutions of the union's governing bodies adopted thereunder. *Sabolsky v. Budzanoski*, 457 F 2d 1243 (3rd Cir. 1972), cert. den. 409 U.S. 853 (1972). The ruling below authorizes a few members of the Union to present themselves as class representatives of the very class which participated in issuing the offending instructions to the Local Union and to recover for the class attorney's fees and/or damages from the Local Union treasury on account thereof.

The participation by the Petitioner in the nationwide and area-wide negotiations is not to be condemned because such form of collective bargaining furthers the national labor policy of promoting industrial peace. In *National Labor Relations Board v. Truck Drivers Local Union 449*, 353 U.S. 87 (1957), this Court stated:

> "The debates over the proposals demonstrate that Congress refused to interfere with such bargaining because there was cogent evidence that in many industries the multi-employer bargaining basis was a vital factor in the effectuation of the national labor policy of promoting labor peace through strengthened collective bargaining."

Since ETMF did not have any road driver jobs within the jurisdiction of Local 657, its only means of obtaining contractual rights to such jobs for its members at distant terminals was by contract negotiations through the Nationwide and Southern Conference bargaining units. Respondents could have requested the right they now seek in this case but they

did not do so. The officers of the Local 657 did not have authority to submit such contract demands to the negotiating committees in the absence of membership authorization. Had they done so they might well have violated their fiduciary responsibilities.

If it is contended that Petitioner Local 657 should have made a demand to the negotiating committee for contractual rights to road jobs, without having authorization from the affected members, the question arises as to specifically what contractual terms should have been requested. If a request had been made for a state wide merged seniority of road and city drivers, it no doubt would have been rejected by ETMF. Such a demand was made of the same employer, and rejected, in *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 425 (6th Cir. 1974). Even if ETMF would have agreed to such a merger of seniority, then Local 657 would have run into the wrath of its members who oppose such a provision.

Regardless of what contention is made, as to contract proposals that might have been submitted, with or without express membership authorization, such proposals had to be approved by the multi-union unit, and the employer, ETMF. Petitioner should not be held liable on the assumption that such approval would have been given, if requested.

The opinion of the Fifth Circuit in *Rodriguez* appears to require Petitioner to monitor the hiring practices of ETMF at its geographically distant terminals, in order to try to protect itself against charges of discrimination in San Antonio, Texas. If statistics showing a racial imbalance in the road driver complement are all that is necessary to prove discrimination, then there is a potential liability on the part of Local 657 in San Antonio, Texas for hiring practices in Atlanta, Georgia, if the scope of the class were extended to the entire Southern Conference. As bargaining representative for Respondents, Local

657 has no authority under the National Labor Relations Act to inquire into, much less control, ETMF hiring practices in Dallas, Texas or Atlanta, Georgia.

Having entered into nationwide bargaining pursuant to express instruction of the membership, Petitioner Local No. 657 was duty-bound to sign the contract following its negotiation and ratification on a nationwide basis. *Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters and California Trucking Association, Inc.*, supra. This case held that a Teamster local union which had participated in bargaining, as did this Petitioner, violated Section 8(b)(3) of the National Labor Relations Act, as amended, 29 U.S.C. 158(b)(3), when it refused to sign the contract. The decision below holds that Petitioner Local 657 rendered itself liable when it discharged the legal duty of signing the contract. The decision presents a serious conflict between the National Labor Relations Act and the Civil Right Acts, and threatens to disturb the well developed body of law under the former which requires the execution of a contract which has been successfully negotiated to its conclusion. At the very least it would be highly disruptive to industrial peace to require participating local unions in multi-union bargaining situations to refuse to sign duly bargained contracts by quibbling about their legality on pain of financial liability.

To the extent that the decision of the Court of Appeals fixes liability on Petitioner Local 657 because it delegated authority to the national bargaining committee and because it executed the subsequently-negotiated contract, it conflicts with the decision of this Court in *Emporium Capwell Co. v. Western Addition Community Organization*, 95 S. Ct. 977 (1975), decided February 18, 1975. The operative facts which create financial liability, according to the Court of Appeals, are routine steps in the statutory collective bargaining procedures contemplated by the National Labor Relations Act. In the *Emporium Cap-*

well case this Court made clear that the exclusive, majority-controller bargaining procedures of the Taft-Hartley Act, as well as the internal regulations of unions in the Landrum-Griffin amendments, are still intact notwithstanding the passage of Title VII of the Civil Rights Act of 1964. In that decision at Footnote 26, 95 S. Ct. at page 990 as in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) at page 48, Footnote 9, this Court has twice noted Senator Clark's interpretive memorandum concerning Title VII that "nothing in Title VII or anywhere else in this Bill affects rights and obligations under the NLRA . . ." Under these authorities it was not incumbent upon Petitioner Local 657 to refuse to participate in the existing bargaining structure, or to forego the economic benefits thereof, or to go it alone in a futile effort to negotiate contractual rights to jobs outside its representation jurisdiction. If such action is demanded by Title VII it is certain that the chances for industrial strife are enhanced while the benefits of collective strength are eliminated. Both results would conflict with statutory policies reviewed in the *Emporium Capwell* decision.

Petitioner Local 657 respectfully says that the Court of Appeals has imposed an obligation on it for failing to do something which it was legally barred from accomplishing under the facts of this case.

II

An Integrated Local Labor Union, the Majority of Whose Members Are Mexican-American and Black, Does Not Violate Either 42 U.S.C. Section 2000e-2 or 42 U.S.C. Section 1981, Solely Because of the Operational Effects of the Employer's Hiring Practices Upon a Collective Bargaining Agreement Which Is Racially Neutral and So Administered.

Petitioner Local 657 did not participate in the negotiation and execution of the first collective bargaining agreement between ETMF and Teamster Union affiliates, covering the jobs

of road drivers. According to the testimony of an ETMF official, the first of the separate contracts for road drivers in Texas was executed in 1951. It applied to such jobs and personnel located and domiciled in Northeast Texas at company facilities in Dallas and Texarkana. There is no evidence that Local 657 even knew that such separate contract was being negotiated.

Since Local 657 has never had any voice in who ETMF hired as a line driver, and it did not participate in the original contractual separation of city and road seniority, it cannot be said that it was a party to any discrimination chargeable to the institution of the separate agreements. This puts Local 657 in a different position from that of those labor organizations found to have violated civil rights of employees because they were present and participated in the original departmental segregation for reasons of race or national origin.

The involvement of Local 657 in the continuation of separate contracts has been circumscribed by its participation in the National and Regional negotiations described above. This participation has been limited to relaying the contractual demands of its members to the negotiating committees, and the signing and administration of the contracts applicable to city drivers.

There is no dispute about the contracts being racially neutral on their face. Furthermore, there is no issue as to whether they have been administered without regard to race, color or national origin.

None of the named Respondents in *Rodriguez*, or any other employee of ETMF, ever complained to Local 657, prior to the filing of charges with the Equal Employment Opportunity Commission that ETMF discriminated against Mexican-Americans and blacks. Nor did any of Respondents ever request Petitioner to forward to the negotiating committees a demand for contractual rights to road jobs with accumulated seniority. The requests

that Rodriguez, Perez and Herrera did make to Local 657 for assistance in transferring to road jobs, and which help they received, cannot be equated with a complaint to Local 657 of racial discrimination or dissatisfaction with their contract. There is no evidence to support a finding that Petitioner Local 657 acquiesced in any discrimination.

Petitioner does not now, and never has, opposed the efforts of Respondents to become road drivers. Furthermore, if any of them have been discriminatorily denied such jobs, they are entitled, not only to the jobs, but also to their "right[illegible]place" seniority on the road driver seniority rosters.

It is not logical to base a finding of civil rights violations, by an integrated Mexican-American and Negro dominated local union, solely upon hiring practices and departmental seniority, especially where the jobs in question did not even exist within the jurisdiction of the union.

The facts of this case bring into focus the dilemma of Petitioner in trying to resolve the conflicting demands of its membership relative to contractual rights with ETMF, and other truck line companies. Shortly after the trial in *Rodriguez* was completed, there was a special meeting of the members of Local 657 working under the National Master Freight Agreement and the Southern Conference supplement. Some of the members proposed, for the first time, the submission of requests for contractual rights for city drivers to transfer to road jobs with accumulated city seniority. All of the proposals, over which there was a division of opinion, were submitted to a vote and rejected. Mexican-American and Negro city drivers constituted a majority of those in attendance.

We are aware that the constitutional and statutory rights of individual members cannot be denied by a majority vote. However, neither should the majority be penalized for exercising its

franchise on disputed issues where that majority is Mexican-American and Black, and there is no evidence that the majority's vote was for the purpose of perpetuating discriminatory hiring practices.

The Court of Appeals rejected Respondents' prayer for merger of the seniority rosters, and suggested an alternative method for eliminating any "lock-in" effects of discriminatory hiring. This alternative would give Respondents one opportunity to move to road jobs with city seniority.

As stated above, Local 657 does not oppose Respondents being given road jobs, but strongly objects to a finding that it violated 42 U.S.C. 2000e-2 and 42 U.S.C. 1981 because they were not given such jobs sooner. The very relief which the Fifth Circuit now gives Respondents is simply a court enforcement of a right they have always had under the contracts involved.

There are no provisions in the collective bargaining agreements which kept ETMF from hiring Respondents into the road driver unit when they were originally employed. Furthermore, there are no provisions in such contracts which have prohibited ETMF from hiring them into the road driver unit, after they had become regular city drivers. Respondents stipulated that their original employment by ETMF was without regard to race, color or national origin. Therefore, if they had been given jobs in the road driver unit, after becoming city drivers, there could not have been any "continuing effects" of discriminatory hiring, by reason of not being able to "carry-over" their city seniority.

They could have been either originally hired as road drivers, or subsequently hired into the road unit from their city jobs. In either event they would have acquired the seniority that the Court of Appeals now says should be granted them. If they

have been discriminatorily denied such jobs, and resulting seniority, it is the result of hiring practices, and not the Petitioner's failure to negotiate into the contracts the remedy found appropriate by the Court of Appeals.

The Fifth Circuit cites *Thornton v. East Texas Motor Freight*, 497 F 2d 416 (6th Cir. 1974); *Bing v. Roadway Express*, 485 F 2d 441 (5th Cir. 1971); and *United States v. Central Motor Lines, Inc.*, 338 F Supp. 532 (W.D.N.C. 1971), in connection with its statements on how Local 657 might have eliminated the "lock-in" effects of separate contracts.

In the *Thornton* opinion at page 425, the Court states:

> "It is argued that the rule nevertheless perpetuated past discrimination against blacks. But this was discrimination by the company against blacks, and not by the union.
>
> The employment of drivers for over-the-road driving was a management function exercised exclusively by the company and without interference by the union.
>
> Traditionally, from the inception of collective bargaining, city and over the road drivers have been placed in separate unions for collective bargaining purposes. The National Labor Relations Board has long held that this separation is appropriate. In *Re Georgia Highway Express*, 150 NLRB at 1649 (1965). Separate Collective bargaining agreements cover each unit. There was no proof that the race of the persons had anything to do with the establishment or maintenance of these separate units."

This Court's attention is called to the fact that the same National and Regional Collective bargaining agreements, the same employer, ETMF, and the same contention relative to perpetuation of discrimination, were all involved in the *Thornton* case, as are present in the instant case.

The Sixth Circuit further stated in *Thornton*, at page 425, that:

> "It is noteworthy that there is no evidence or finding that the union connived or conspired with the company, or with anyone else, to discriminate against the plaintiffs. As we will point out, it is indeed very questionable whether the union ever acquiesced, let alone acquiesced for fear of offending its white city drivers who were just as much interested in eliminating the no-transfer rule as were the black drivers. . . .
>
> It should be pointed out further that the collective bargaining agreements which were entered into between the Southern Conference, the International Brotherhood of Teamsters and the company, contained no provision prohibiting transfers. . . .
>
> We are of the opinion, for the reasons stated, that the finding of the District Court against the union, as above set forth, is not supported by substantial evidence, and is clearly wrong"

As we interpret the Court's opinion *Thornton*, it states, in substance, that in the absence of some discriminatory act of commission or omission by the local union, in the creation or continuance of the separate contracts, that such union entity cannot be held liable, solely on the theory of perpetuation of past discriminatory hiring practices.

Quarles v. Phillip Morris, Inc., 271 F Supp. 842 (E.D. Va. 1967); and *United Papermakers and Paperworkers v. United States*, 416 F 2d 980, cert. denied 397 U.S. 919 (1970), in which the perpetuation of discrimination rule was formulated, involved situations in which the unions participated in discriminatory segregation of blacks and whites under separate contracts, even to the point of establishing separate locals to administer the contracts. They should not be cited as authority for holding Petitioner Local 657 liable for violating 42 U.S.C. Section 2000e-2 or 42 U.S.C. Section 1981, in the factual context of this case.

CONCLUSION

Petitioner Local Union 657 prays that the judgments of the Court of Appeals be reversed in all three of the above cases, and that the judgments of the Trial Court dismissing the complaints against this Petitioner be affirmed.

Respectfully submitted

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